

BEFORE THE TENNESSE REGULATORY AUTHORITY

NASHVILLE, TENNESEE

JULY 29, 1999

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| IN RE: |) | |
| |) | |
| JOINT APPLICATION OF ROCKY MOUNTAIN |) | |
| INTERNET, INC., ROCKY MOUNTAIN |) | DOCKET NO. |
| BROADBAND, INC., AND COMMUNICATION |) | 99-00327 |
| NETWORK SERVICES, L.L.C. FOR APPROVAL |) | |
| <i>NUNC PRO TUNC</i> OF AN ASSET PURCHASE AND |) | |
| APPROVAL OF AN ASSIGNMENT OF |) | |
| CERTIFICATE AND CUSTOMER BASE |) | |

ORDER APPROVING ASSET PURCHASE AND ASSIGNMENT OF
CERTIFICATE AND CUSTOMER BASE

This matter came before the Tennessee Regulatory Authority ("Authority") on the Joint Application of Rocky Mountain Internet, Inc. ("RMI"),¹ Rocky Mountain Broadband, Inc. ("RMB"), and Communication Network Services, L.L.C. ("CNS") (collectively "Applicants") for approval *nunc pro tunc* of an asset purchase and assignment of certificate and customer base pursuant to Tenn. Code Ann. § 65-4-113. The Directors of the Authority considered this matter at a regularly scheduled Authority Conference held on May 18, 1999.²

From the Application and the record existing in this matter, the Authority has determined the following:

1. CNS is an Alabama limited liability company headquartered at 2900

¹ Rocky Mountain Internet, Inc. has since changed its name to RMI.NET.

² This Joint Application was filed with the Authority on April 30, 1999.

Waverly Parkway, Opelika, Alabama 36803. On April 17, 1997, the Authority granted CNS authority to provide operator services and resold interexchange telecommunications services in Tennessee in Case No. 97-00015.

2. RMI is a Delaware corporation with principal offices located at 999 18th Street, Suite 2201, North Tower, Denver, Colorado 80202. RMI's wholly-owned subsidiary, RMB is a Colorado corporation located at the same address. RMI is a national provider of dial-up and switched network access to the Internet. RMB is authorized to provide local exchange and interexchange services in several states.

3. On February 5, 1999, RMI and CNS executed an Asset Purchase Agreement ("Agreement") under which RMI purchased all of the assets of CNS. The Applicants state that due to events beyond the control of CNS, as well as management decisions that adversely impacted CNS, the acquisition had to be completed on an expedited basis.

4. The Applicants state that although the Agreement resulted in a transfer of all of the assets of CNS to RMI, the Agreement did not involve a change in the manner in which the customers of CNS will receive their telecommunications services and as a result, such transfer will be completely transparent to consumers.

I. CRITERIA FOR APPROVING TRANSFER

A transfer of authority to provide utility services cannot occur until the regulated public utility first obtains approval of such transfer by the Authority. The Directors of the Authority must approve the transfer pursuant to the requirements set forth under Tenn. Code. Ann. § 65-4-113. This Section, in pertinent part, provides for the following:

- (a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of

public convenience and necessity issued by the Authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

- (b) Upon petition for the approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.
- (c) Following approval of the transfer pursuant to this section, the transferee shall be granted full authority to provide the transferred services subject to the continuing regulation of the authority. The transferor shall no longer have the authority to provide the transferred services, but shall retain the authority to provide other services, if any are retained, which were not included in such transfer.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the entire record in this matter, including the Application, the Directors find and conclude as follows:

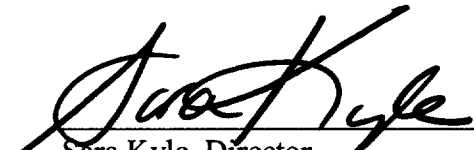
1. That the Authority has jurisdiction over the subject matter of said application pursuant to Tenn. Code. Ann. § 65-4-113;
2. That RMI, and its wholly-owned subsidiary, RMB, an experienced and duly certificated telecommunications carrier, possess sufficient managerial, technical, and financial qualifications to permit the acquisition of the assets of CNS and the assignment of CNS's certificate and customer base to RMB.
3. That based upon the foregoing, the asset purchase and assignment of CNS's certificate and customer base to RMB are compatible with the public interest.

IT IS THEREFORE ORDERED THAT:


1. The Application requesting approval *nunc pro tunc* of the asset purchase and assignment of certificate and customer base is approved.
2. RMB is authorized to provide operator services and resold interexchange telecommunications services in Tennessee.
3. CNS is no longer permitted to provide operator services and resold interexchange telecommunications services in Tennessee.
4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary